

Handout: Rights Protected or Extended by Court Decisions

Most of the rights which Australians enjoy today are based originally on British and Australian court decisions, called 'common law'. A person did or did not do something, somebody objected and took the case to court, and the court made a decision to protect, extend or limit that right. Parliament might then have made a law which controlled or defined that action.

Reliance on the common law or courts to establish people's rights has reflected the idea that once a law is written down in an Act of Parliament, it may become quite inflexible whereas judges are capable of making balanced decisions which suit the particular facts of a situation, and which can be adapted when the circumstances have changed. Not all people accept that courts and judges are the best place to make decisions which affect the whole society.

Case Study

A man was charged with a serious crime. He could not afford to hire a lawyer to defend him, and he was refused legal aid (a lawyer paid for by the state). He represented himself in court during the 40-day trial, and was found guilty. He appealed against the decision, saying that he was denied a fair trial by not having legal representation. In coming to their decision, the High Court judges had to interpret the rights of the accused in:

- common law (previous judgements of the courts)
- Acts of Parliament such as the Commonwealth Judiciary Act (1903) that says that a person committed for trial should, if they cannot afford it, have a lawyer appointed by the government, and
- a previous High Court decision that not having legal representation did not prejudice a fair trial.